



# Memorandum

**TO: PLANNING COMMISSION**

**FROM: Stephen M. Haase**

**SUBJECT: SEE BELOW**

**DATE: April 30, 2003**

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**SUBJECT: CP03-009, CONDITIONAL USE PERMIT LOCATED ON THE NORTHWEST CORNER OF SAN TOMAS EXPRESSWAY AND WILLIAMS ROAD**

The proposed project would allow an addition consisting of two settling ponds and three storage bins for temporary storage of excavated soil, asphalt, concrete, and base rock at an existing public utility facility (San José Water Company).

This item was last heard before the Planning Commission on April 9, 2003. At that hearing, the Commission took public testimony and engaged in discussion related to the project, and then continued the item to the April 23 hearing. The Commission also directed staff to coordinate a neighborhood meeting. On the evening of Thursday, April 17, Planning staff met with the applicant and members of the Boynton Community Association (BCA) at the project site. Approximately 25 BCA members attended the neighborhood meeting.

At the first Planning Commission hearing and the neighborhood meeting, Commissioners and members of the public raised concerns including noise, standing water (mosquitoes), dust, odors, and aesthetics. Please see the sections below for more discussion related to these specific items.

## Noise

Noise from the proposed unloading activities would be infrequent and short-term. The purpose of this site is to accept temporary delivery and storage of trench spoils (excavated soil, asphalt, concrete, and base rock). This would occur at night or early in the morning. Materials will generally be taken directly to the Guadalupe Mines Landfill, provided that the timing coincides with the landfill's normal business hours. The applicant has estimated that late night deliveries of excavated soil would occur about once every three months). The trench spoils would then be relocated to a landfill during daytime hours.

Planning staff anticipates that the noise generated by the Water Company's dump truck near the proposed bins and ponds will not significantly affect nearby residents. The nearest home is located approximately 300 feet away from the proposed work. Due to the anticipated infrequency of truck traffic and the relatively high ambient noise level of the adjacent San Tomas Expressway, project noise levels would be minimally perceptible from adjacent residences at this distance from the property line. At the neighborhood meeting, the Water Company truck's back-up beeper was not significantly louder than the truck's engine at idling speed.

In order to respond to the neighbors' concerns and minimize potential noise impacts associated with this project, the applicant is proposing the following changes that would even further reduce any potential noise impacts:

- ✍ Relocate the existing on-site circulation driveway further from the residential property line (i.e., closer to San Tomas Expressway)
- ✍ Raise the height of the material enclosure walls to 12 feet to double as a sound wall. Additionally, "wing walls" on the sides of the bin enclosure would further help to shield truck noise away from residential properties.

Planning staff supports these modifications, and is recommending that they be included into the project by means of a subsequent Permit Adjustment; see below.

### Standing Water

The proposed project includes temporary storage of waterlogged trench spoils in two new 30-inch-deep evaporation ponds. The soaked materials would be spread out in the ponds and left until they are dry enough to be removed from the site and transported to a landfill. Concern was raised by a few of the area residents about the potential for mosquito breeding. Some amount of standing water will occur during the settling and drying process. However, the amount of standing water and the length of time it would be present seems unlikely to present a medium for mosquito breeding. The breeding cycle of a mosquito from egg to adult requires 9 to 19 days, depending on temperature and species (source: Alameda County Vector Control,

<http://www.mosquitoes.org/mosquitoes/lifecycle.html>). The trench spoils seem likely to dry out and be able to be removed before this amount of time elapses.

However, there is some possibility that standing water will occasionally provide an opportunity for mosquitoes to breed. Therefore, Planning staff is recommending that the applicant be required to monitor for the presence of standing water and take preventive action for mosquito larvae when standing water is present. According to the U.S. Environmental Protection Agency (EPA), a number of safe mosquito-abatement pesticide products are on the market (source:

<http://www.epa.gov/pesticides/factsheets/larvicides4mosquitos.htm><sup>1</sup>). These include anti-mosquito bacteria such as BTI, surface coatings ("films"), surface oils, and other low-toxicity methods applied by spray, pellets, or briquets. According to the EPA, these techniques provide little or no risk of toxicity to humans and other non-mosquito animals and birds. Staff is recommending that the applicant be required to keep the proposed evaporation ponds free of mosquito eggs, larvae, and pupae by means of an EPA-approved mosquito control technique at any time when standing water is present in the ponds.

### Dust, Odors, and Aesthetics

Dust from the proposed project is expected to be minimal, in that the trench spoils to be temporarily stored on the site will be damp and/or enclosed in storage bins while they are on the site. Trucks transporting the materials to and from the site will travel on the paved driveway on the site. The materials in question (soil, asphalt, and rocks) do not typically have any perceptible odor since they do not also include vegetation.

The project includes removal of seven Eucalyptus trees, ranging in size from six inches to 30 inches in circumference, two of which are ordinance-size trees. A total of 22 replacement trees will be

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<sup>1</sup> Spelling error in the URL noted (not a typo). The word "mosquitoes" is spelled with a letter "e" in the last syllable.

planted on the site. The final locations and species of the replacement trees will be determined as part of a subsequent Permit Adjustment, in order to provide an optimal amount of screening along the residential property line.

### CEQA Review

The Director of Planning has determined this project to be exempt from further environmental review under section 15301 of the CEQA guidelines. At the first public hearing for the project, clarification was sought of the basis for this determination. Section 15301 of the CEQA guidelines is a categorical exemption for minor expansion of, or additions to, existing facilities. Under this exemption, such an addition or expansion “consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The language goes on to cite examples of projects that may fall within this section. Among others, the examples include structural additions of up to 10,000 feet onto existing buildings, or a “store, motel, office, restaurant, or similar small commercial structure if designed for an occupant load of 30 persons or less.”

The project site is an existing utility facility that has been in operation since the 1960s and has a General Plan designation of Public/Quasi-Public. The proposed addition is a low-intensity, emergency-only land use. In staff's opinion, the project conforms to the intent of the Section 15301 categorical exemption and is located too far from residential land uses to present any significant impacts in terms of noise, dust, or aesthetics.

### Revised Resolution

Planning staff has revised its recommended conditions of approval to address the items discussed in this memo. See list of new conditions attached below. A subsequent Permit Adjustment is required in order for Planning staff to process and approve revised plans for the relocation of the gate and driveway, addition of a wing wall to the bin enclosure, and final locations and species of replacement trees. The additional conditions proposed for inclusion in this permit have been discussed with, and are acceptable to, the applicant.

### Compliance Hearing

Staff is recommending an additional condition of approval requiring a compliance hearing before the Planning Commission within one year from the date of approval of this permit, if any complaints directly related to the land use approved under this permit have been reported to the Code Enforcement Division during the intervening year. Code enforcement or law enforcement complaints unrelated to the bins and ponds shall not be applicable for purposes of this requirement. A condition of approval for this requirement is included in the revised resolution.

Stephen M. Haase, Director  
Planning, Building and Code Enforcement

**Additional conditions of approval, CP03-009**  
**Included in revised resolution.**

1. **Permit Adjustment required.** Within 30 days, the developer shall secure and agree to implement a Permit Adjustment addressing the following items to the satisfaction of the Director of Planning. Failure to comply with this condition shall render this Permit Amendment null and void.
  - a. Realignment of the on-site driveway to increase its distance from the residential property line.
  - b. Shifting of the entrance gate on Williams Road approximately 10 feet further into the interior of the site from its present location.
  - c. Modification of the bin enclosure to include a 12-foot-high walls and/or a wing wall for noise attenuation purposes.
  - d. Location and species selection for at least 22 new trees (native species) on the site
2. **Mosquito control.** The applicant shall be required to monitor and keep the proposed evaporation ponds free of mosquito eggs, larvae, and pupae by means of an EPA-approved mosquito control technique at any time when standing water is present in the ponds.
3. **Limitation on operating hours.** Removal of stored materials from the site for purposes of off-haul to a landfill shall be limited to 8:00 AM to 6:00 PM Monday through Friday and 9:00 AM to 6:00 PM on weekends.
4. **No on-site sorting of materials.** Sorting of trench spoils (soil, asphalt, concrete, base rock) shall not occur on-site. Materials in the bins shall not be piled in excess of five feet in height. Materials stored shall be limited only to trench spoils for the subject user only.
5. **Storage capacity limit.** On-site storage of trench spoils materials is limited to the capacity of the bins and settling ponds (i.e., no piling of materials on the ground is permitted). The trench spoils shall not be piled any higher than five feet. Materials deposited in the bins shall be removed from the site on the first following non-holiday weekday.
6. **Limitation on equipment storage.** No on-site storage of vehicles or heavy equipment unrelated to the transportation of materials in the storage bins and evaporation ponds is approved under this permit. No more than one loader and one dump truck shall be parked overnight on the site at any given time. The loader may be permanently stored on the site. The dump truck shall be removed from the site on the first non-holiday weekday following after-hours deposit of trench spoils on the site.
7. **Dust control.** Trucks and equipment associated with this land use shall be operated on paved driveway surfaces only.
8. **Activity log.** The developer shall maintain a daily record of the number of dump truck deliveries associated with this project, and times of day for such deliveries. Said records shall be maintained for a period of at least one year. Delivery records shall be made available within 48 hours to the Director of Planning upon request.
9. **One-year compliance hearing.** This project shall be subject to a compliance hearing before the Planning Commission within one year from the date of approval of this permit, if any complaints directly related to the land use approved under this permit have been reported to the Code Enforcement Division during the intervening year. Code enforcement or law enforcement complaints unrelated to the bins and ponds shall not be applicable for purposes of this requirement. Pending the outcome of the compliance hearing, the land use as approved under this permit shall be subject to further modification, restrictions, or revocation at the discretion of the Planning Commission.